

## GOVERNMENT (STATE) COMMENTS (GS)

### GS1

**From:** Smita Deshpande [smita\_deshpande@dot.ca.gov]  
**Sent:** Friday, June 22, 2012 3:36 PM  
**To:** 405.dedcomments.parsons@parsons\_.com  
**Cc:** iffat\_camar@dot.ca.gov  
**Subject:** Comments from Fish and Game

I got a call from Fish and Game (Tim Dillingham) and he said that he has completed his review on the Draft ED for the 405 Improvement Project and has no comments. } 1

Smita Deshpande, Branch Chief  
Division of Environmental Analysis, Branch 'A'  
Caltrans District 12  
(949) 724-2245

### GS2

STATE OF CALIFORNIA  
PUBLIC UTILITIES COMMISSION  
320 WEST 4<sup>TH</sup> STREET, SUITE 500  
LOS ANGELES, CA 90013

EDMUND G. BROWN JR., Governor



May 25, 2012

Smita Deshpande  
California Department of Transportation - District 12  
3347 Michelson Drive, Suite 380  
Irvine, CA 92612

Dear Ms. Deshpande:

Re: SCH 2009091001; San Diego Freeway (I-405) Improvement Project

The California Public Utilities Commission (Commission) has jurisdiction over the safety of highway-rail crossings (crossings) in California. The California Public Utilities Code requires Commission approval for the construction or alteration of crossings and grants the Commission exclusive power on the design, alteration, and closure of crossings.

The Commission's Rail Crossings Engineering Section (RCES) is in receipt of the *Draft Environmental Impact Report (DEIR)* for San Diego Freeway (I-405) Improvement Project from the State Clearinghouse. According to the DEIR, the California Department of Transportation (Caltrans) proposes to improve the San Diego Freeway (I-405) located approximately between State Route 73 and Interstate Freeway 605. The United States Navy (US Navy) Seal Beach Branch line and the Union Pacific Railroad Company (UPRR) Stanton Branch line cross under the I-405 on this particular freeway segment. } 1

Modifications to an existing grade separated crossing require authorization from the Commission. More information can be found at:  
<http://www.cpuc.ca.gov/PUC/transportation/crossings/Filing+Procedures/>

Caltrans should arrange a meeting with RCES, US Navy and UPRR staff to discuss relevant safety issues and requirements for authorization to alter the existing grade-separated crossings.

If you have any questions, please contact Bill Lay at 213-576-1399, email at [bill.lay@cpuc.ca.gov](mailto:bill.lay@cpuc.ca.gov), or myself at [rxm@cpuc.ca.gov](mailto:rxm@cpuc.ca.gov), 213-576-7078.

Sincerely,

Rosa Muñoz, PE  
Senior Utilities Engineer  
Rail Crossings Engineering Section  
Consumer Protection & Safety Division

CC: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044

## GS3

## GS3 Continued

JOSEPH TAVAGLIONE, Chair  
JAMES C. GHILMETTI, Vice Chair  
BOB ALVARADO  
DARUS ASSEMI  
YVONNE H. BURKE  
LUCETTA DURAN  
JAMES EARP  
DARIO FROMMER  
CARL GUARDINO  
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JAMES WARREN  
  
SENATOR MARK DESAULNIER, Ex Officio  
ASSEMBLY MEMBER BONNIE LOWENTHAL, Ex Officio  
  
BIMLA G. RHINEHART, Executive Director



EDMUND G. BROWN Jr., Governor

## CALIFORNIA TRANSPORTATION COMMISSION

1120 N STREET, MS-52  
SACRAMENTO, CA 95814  
P. O. BOX 942573  
SACRAMENTO, CA 94273-0001  
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(916) 654-4245  
<http://www.ctc.ca.gov>



September 12, 2012

Ms. Smita Deshpande, Branch Chief  
Caltrans-District 12  
ATTN: 405 DEIR-DEIS Comment Period  
2201 Dupont Drive, Suite 200  
Irvine, CA 92612

RE: Draft Environmental Impact Report for the San Diego Freeway (I-405) Project

Dear Ms. Deshpande,

The California Transportation Commission, as a Responsible Agency, received the Draft Environmental Impact Report (DEIR) for the San Diego Freeway (I-405) Roadway Improvements project (project) in Orange and Los Angeles Counties.

The project proposes to construct improvements to the Interstate 405 corridor from State Route 73 to Interstate 605 that will widen the corridor, relieve congestion, and improve operational efficiencies.

It is our understanding that the project is estimated to cost between \$1.3-\$1.7 billion. A large portion of the funding is included in the Orange County Renewed Measure M transportation sales tax initiative funding program. Other potential funding sources include State Transportation Improvement funds, federal funds, and tolls/user fees for the Express Lanes portion of one of the build alternatives. Depending on the availability of funds and assuming the design-build procurement method, construction is estimated to begin in Fiscal Year 2014-15.

The Commission considered the DEIR at their August 22, 2012 Commission meeting. The Commission has no comments pertaining to the environmental impacts or the alternatives considered in the DEIR. However, the Commission recommends that, depending on the alternative selected, the Department and its partners identify and secure the necessary funding to complete the project. In addition, since design-build procurement and tolling is under consideration, the Commission encourages Caltrans and its partners to ensure early

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} 2

Ms. Smita Deshpande  
September 12, 2012  
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communication and coordination with the Commission in the event it is anticipated that the Commission will be requested to approve the project from delivery through either a design-build or public private partnership procurement consistent with the provisions of Senate Bill 4 (SBX2 4, Statutes of 2009), or for construction approval to allow for financing and tolling approval by the California Transportation Financing Authority as provided for in Assembly Bill 798 (AB 798, Statutes of 2009).

2 cont.

Certain concerns were also raised to the Commission that we believe are important to bring to your attention for resolution. Specifically, on behalf of Assemblymember Bonnie Lowenthal, Ms. Janet Dawson, Chief Consultant, Assembly Transportation Committee, expressed certain concerns related to the environmental process related to a lack of interregional coordination on this project and encouraged everyone with responsibility for the project to come to the table and work with the regions in the north to develop the same inclusive participation as has been demonstrated on previous projects. In addition, numerous concerns were raised by Mr. Adam Littig with respect to this project. The specific concerns are included in the enclosed letter.

3

The Commission should be notified as soon as the environmental process is complete since the Commission cannot allocate funds to a project for design, right of way, or construction until the final environmental document is complete and the Commission has considered the environmental impacts of the project and approved the environmentally cleared project for future consideration of funding. Upon completion of the CEQA process, prior to the Commission's action to approve the project for future consideration of funding, the Commission expects the lead and/or implementing agency to provide written assurance whether the selected alternative identified in the final environmental document is or is not consistent with the project programmed by the Commission and included in the Regional Transportation Plan. In the absence of such assurance of consistency, it may be assumed that the project is not consistent and Commission staff will base its recommendations to the Commission on that fact. The Commission may deny funding to a project which is no longer eligible for funding due to scope modifications or other reasons.

4

5

If you have any questions, please contact Kandra Hester at (916) 653-7121.

Sincerely,

*Bimla G. Rhinehart*  
BIMLA G. RHINEHART  
Executive Director

c: Jay Norvell, Chief, Caltrans Environmental Analysis  
Bonnie Lowenthal, Assemblymember

GS3 Continued

3630 Sunflower Circle  
Seal Beach, CA 90740  
June 27, 2012

Mitchell Weiss  
California Transportation Commission  
1120 N Street, Room 2221 (MS-52)  
Sacramento, CA 95814

Re: Renewed Measure M (or Measure M2) approved by voters on November 7, 2006  
San Diego Freeway (I-405) Improvement Project proposed by the OCTA

*I feel that you must be made aware of the gross miscarriage of the will of the voters.* I raise these issues as they specifically relate to Orange County's Renewed Measure M (or Measure M2) approved by voters on November 7, 2006 and the San Diego Freeway (I-405) Improvement Project currently in the Environmental Impact Report (EIR) public comment period proposed by the Orange County Transportation Authority (OCTA).

I have outlined a succinct version of the voter issue below:

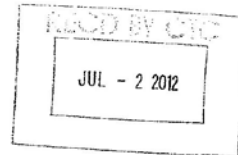
- The OCTA completed a study whose results suggested that the best and only way to improve the 405 freeway in North Orange County was to add a single lane in each direction.
- The OCTA and Orange County placed Measure M2 on the ballot specifically stating that additional funds were needed to add one lane to the 405 freeway in each direction. Measure M2 was supported by over 69% of the voters. Orange County residents voted to pay an additional half-cent sales tax to fund this project (and many others outlined in Measure M2).
- Following the passage of Measure M2, the OCTA reaffirmed their commitment to use the funds from Measure M2 to add one lane to the 405 freeway in each direction.
- Six years pass. Now the OCTA is proposing THREE build options—only one of which is the original voter-approved and voter-funded option adding a single lane to the 405 in each direction.

Based on my observations at four public meetings that I have attended concerning the three-build-option proposal, I believe that OCTA is planning to take the tax payer's money to build something other than the voter-supported and voter-paid option outlined in Measure M2!

I have taken the time to hunt through various documents and websites to obtain facts that support my contentions.

The OCTA completed a study whose results suggested that the best and only way to improve the 405 freeway in North Orange County was to add a single lane in each direction: Prior to voter-approval of Measure M2, the OCTA completed the "Interstate 405 Major Investment Study." The "Interstate 405 Major Investment Study"

TAB 24



GS3 Continued

(as adopted by the Orange County Transportation Authority Board of Directors on October 14, 2005) is summarized and states:

"Alternatives for Improvement

An initial 13 alternatives were narrowed down to two: a minimal widening option (alternative 4) and a moderate widening option (alternative 8b). These alternatives were the result of an extensive collaboration between the OCTA study team, traffic engineers, local public officials, business and community leaders, and commuters and local residents, all of whom gave of their time, ideas, and comments to the study effort. The alternatives for improvement represent a community consensus about what is feasible to do to improve I-405 in the years ahead.

After reviewing both alternatives, the project's policy group, consisting of elected officials, city managers and technical staff from each affected city, made a decision to recommend to the OCTA Board of Directors that only the minimal widening alternative (alt. 4) be moved forward into the environmental study phase. The Board's Regional Planning & Highways Committee confirmed this decision on September 19. The OCTA Board ratified this approach by choosing alternative 4 as the Locally Preferred Alternative on October 14, 2005.

Alternative 4 adds a general purpose lane in each direction between Brookhurst Street and I-605. It adds auxiliary lanes, linking an on-ramp to the next offramp, in many locations. Alternative 4 generally stays within the existing right-of-way, but there are some property acquisitions in the vicinity of two interchanges requiring improvement. Those interchanges are at Springdale Street/Westminster Avenue and at Magnolia Street/Warner Avenue.

Next Steps

Now that the Board has elected to further study the minimal widening alternative, state and federal regulations require the preparation of an Environmental Impact Report (EIR). Funding is not currently available to begin the EIR process. The process of producing those reports will further refine the project(s) ultimately to be constructed. Once funding is identified it will take two to three years to complete the EIR.<sup>1</sup>

The OCTA and Orange County placed Measure M2 on the ballot specifically stating that additional funds were needed to add one lane to the 405 freeway in each direction. Measure M2 was supported by over 69% of the voters. Orange County residents voted to pay an additional half-cent sales tax to fund this project (and many others outlined in Measure M2): On November 7, 2006, the voters of Orange County, California approved Renewed Measure M (also known as Measure M2) imposing a half-cent sales tax in Orange County designed to fund transportation improvements. The text of this voter-approved ordinance states:

<sup>1</sup> "What is the San Diego Freeway (I-405) Major Investment Study?"  
<http://www.octa.net/default.aspx?id=21798&terms=405+mis>

## GS3 Continued

"The improvements will adhere to recommendations of the Interstate 405 Major Investment Study (as adopted by the Orange County Transportation Authority Board of Directors on October 14, 2005) and will be developed in cooperation with local jurisdictions and affected communities."<sup>2</sup>

Following the passage of Measure M2, the OCTA reaffirmed their commitment to use the funds from Measure M2 to add one lane to the 405 freeway in each direction: Following the passage of Measure M2, The OCTA 2006 Annual Report lauds itself and the voters of Orange county stating:

"On November 7, 2006, Orange County voters made history by approving the Renewed Measure M Transportation Investment Plan. This is the first time since 1912 that a transportation measure has received a greater than two-thirds majority in Orange County. Orange County voters passed the renewal its first time on the ballot, a testament to OCTA's success in keeping the promises of the original Measure M."<sup>3</sup>

Two pages later in the annual report, the OCTA reaffirms its commitment to adding a single general purpose lane in each direction to the 405 freeway (the minimal widening option).

"Work began on the Project Study Report for the San Diego Freeway (I-405) MIS after the OCTA Board selected Alternative 4 (the minimal widening option) as the Locally Preferred Strategy."<sup>4</sup>

Six years pass. Now the OCTA is proposing THREE build options—only one of which is the original voter-approved and voter-funded option adding a single lane to the 405 in each direction: The OCTA has prepared its Environmental Impact Report (EIR) and is in the public comment phase of the report. Three build options are outlined. The proposed "Build Alternative 1" is the option that was presented to the voters in 2006, approved by the voters in 2006, and funded by Orange County tax payers.

**"Build Alternative 1: Add One General Purpose Lane in Each Direction**

- o Adds a single general purpose lane in each direction of the I-405 freeway from Euclid Street to the I-605 interchange
- o Interchange improvements within the project limits

**Build Alternative 2: Add Two General Purpose Lanes in Each Direction**

- o Alternative 2 would add one general purpose freeway lane in each direction on I-405 from Euclid Street to the I-605 interchange (as in Alternative 1), plus add a second general purpose lane in the northbound direction from Brookhurst Street to the SR-

<sup>2</sup> "San Diego Freeway (I-405) Improvements between the I-605 Freeway in Los Alamitos area and Costa Mesa Freeway (SR-55)", Renewed Measure M Transportation Investment Plan, by Orange County Local Transportation Authority, Page 13, taken directly from the full text of Measure M.

<http://www.octa.net/MeasureM2/REST/ContentStream.aspx?entryId=1346&mode=Download>

<sup>3</sup> "Renewed Measure M", OCTA 2006 Annual Report, by Orange County Local Transportation Authority, Page 7.

[http://www.octa.net/uploadedfiles/Files/pdf/octa\\_annual\\_2006.pdf](http://www.octa.net/uploadedfiles/Files/pdf/octa_annual_2006.pdf)

<sup>4</sup> "Freeways", OCTA 2006 Annual Report, by Orange County Local Transportation Authority, Page 9.

[http://www.octa.net/uploadedfiles/Files/pdf/octa\\_annual\\_2006.pdf](http://www.octa.net/uploadedfiles/Files/pdf/octa_annual_2006.pdf)

## GS3 Continued

22/7th Street interchange and a second general purpose lane in the southbound direction from the Seal Beach Boulevard on-ramp to Brookhurst Street.

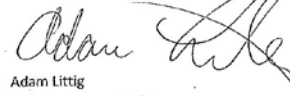
**Build Alternative 3: Express Facility Alternative**

- o Adds one toll lane to the existing carpool lane that will be managed together (Federal Highway Administration tolling authority required)
- o Adds a single general purpose lane in each direction of the I-405 freeway from Euclid Street to the I-605 interchange
- o Interchange improvements within the project limits<sup>5</sup>

Obviously, both Build Alternative 2 and Build Alternative 3 are NOT "minimal widening options" as proposed, supported, and paid for by the voters in 2006. The OCTA used voter-approved tax payer money allocated to the minimal build option to make preliminary plans for two other alternatives NOT supported by voters. The OCTA is currently completing an EIR for those two plans as well using voter-approved tax payer money allocated to prepare an EIR for only Build Alternative 1. There are many, many other issues with the proposed project including air quality, insufficient funds, noise, bottlenecks that the project would create rather than solve, using taxpayer monies to build toll lanes when the ordinance approved specifically mentions freeways, sound walls, right of way, eminent domain, etc. Most of these issues are exasperated by Build Alternative 2 and Build Alternative 3, but these issues are not the focus of my letter to you.

Based on the attitude and the tone of the four public meetings that I have attended concerning the OCTA's current proposal, I strongly believe that the OCTA is heavily leaning toward Build Alternative 3. The meetings have struck me as public relations meetings designed to convince people that Build Alternative 3 is the best option. The voters of Orange County both SUPPORTED and PAID for Build Alternative 1. No other options should be "considered". The government is flouting the will of the voter. Please do everything that you can to help make sure that the will of voters is implemented—support Build Alternative 1.

Thank you for taking the time to review this letter.




Adam Littig  
3630 Sunflower Circle  
Seal Beach, CA 90740  
[adam@adamlittig.com](mailto:adam@adamlittig.com)  
562-508-0803

<sup>5</sup> "San Diego Freeway (I-405) Improvement Project." <http://www.octa.net/i-405/IPO.aspx>


GS4

GS4 Continued




Department of Toxic Substances Control

Matthew Rodriguez  
Secretary for  
Environmental Protection



Deborah O. Raphael, Director  
5796 Corporate Avenue  
Cypress, California 90630



Edmund G. Brown Jr.  
Governor

DOISC

June 12, 2012

Ms. Smita Deshpande, Branch Chief  
Caltrans District 12, "Attn: 405 DEIR-DEIS Comment Period"  
3347 Michelson Drive, Suite 100  
Irvine, California 92612-1692

NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL IMPACT REPORT /  
ENVIRONMENTAL IMPACT STATEMENT FOR THE SAN DIEGO FREEWAY (I-405)  
IMPROVEMENT PROJECT, (SCH #2009091001), ORANGE COUNTY, CALIFORNIA

Dear Ms. Deshpande:

The Department of Toxic Substances Control (DTSC) has received your submitted Draft Environmental Impact Report/ Environmental Impact Statement (EIR/EIS) for the above-mentioned project. The following project description is stated in your document: "The project proposes to improve the mainline freeway and interchanges on I-405 in Orange and Los Angeles counties. The proposed project would relieve congestion and improve operational efficiency on I-405 between State Route (SR)-73 and Interstate 605 (I-605). The approximately 16-mile-long project corridor is primarily located in Orange County on I-405 and traverses the cities of Costa Mesa, Fountain Valley, Huntington Beach, Westminster, Garden Grove, Seal Beach, Los Alamitos, Long Beach, and the community of Rossmore. I-405 is currently a controlled-access highway facility, with 8 to 12 mixed-flow general purpose (GP) lanes and two high-occupancy vehicle (HOV) lanes, which is over capacity and subject to traffic congestion and travel delays. The project study area is located within an extensively urbanized area of Orange County with few vacant or undeveloped parcels of land. Properties adjoining the study area consist of a mix of residential, commercial, and light industrial properties. The dominant land uses within the project study area include low- and medium-density residential, commercial, institutional, light industrial, and agricultural."

Based on the review of the submitted document DTSC has the following comments:

- 1) The EIR/EIS should evaluate whether conditions within the Project area may pose a threat to human health or the environment. Following are the databases of some of the regulatory agencies:
  - National Priorities List (NPL): A list maintained by the United States Environmental Protection Agency (U.S.EPA).

Ms. Smita Deshpande  
June 12, 2012  
Page 2

- Envirostor (formerly CalSites): A Database primarily used by the California Department of Toxic Substances Control, accessible through DTSC's website (see below).
- Resource Conservation and Recovery Information System (RCRIS): A database of RCRA facilities that is maintained by U.S. EPA.
- Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS): A database of CERCLA sites that is maintained by U.S.EPA.
- Solid Waste Information System (SWIS): A database provided by the California Integrated Waste Management Board which consists of both open as well as closed and inactive solid waste disposal facilities and transfer stations.
- GeoTracker: A List that is maintained by Regional Water Quality Control Boards.
- Local Counties and Cities maintain lists for hazardous substances cleanup sites and leaking underground storage tanks.
- The United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California, 90017, (213) 452-3908, maintains a list of Formerly Used Defense Sites (FUDS).

- 2) The EIR/EIS should identify the mechanism to initiate any required investigation and/or remediation for any site within the proposed Project area that may be contaminated, and the government agency to provide appropriate regulatory oversight. If necessary, DTSC would require an oversight agreement in order to review such documents.
- 3) Any environmental investigations, sampling and/or remediation for a site should be conducted under a Workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations, including any Phase I or II Environmental Site Assessment investigations should be summarized in the document. All sampling results in which hazardous substances were found above regulatory standards should be clearly summarized in a table. All closure, certification or remediation approval reports by regulatory agencies should be included in the EIR/EIS.
- 4) If buildings, other structures, asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should also be conducted for the

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Ms. Smita Deshpande  
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presence of other hazardous chemicals, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints (LPB) or products, mercury or ACMs are identified, proper precautions should be taken during demolition activities. Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies.

- 5) Future project construction may require soil excavation or filling in certain areas. Sampling may be required. If soil is contaminated, it must be properly disposed and not simply placed in another location onsite. Land Disposal Restrictions (LDRs) may be applicable to such soils. Also, if the project proposes to import soil to backfill the areas excavated, sampling should be conducted to ensure that the imported soil is free of contamination.

- 6) Human health and the environment of sensitive receptors should be protected during any construction or demolition activities. If necessary, a health risk assessment overseen and approved by the appropriate government agency should be conducted by a qualified health risk assessor to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment.

- 7) If the site was used for agricultural, livestock or related activities, onsite soils and groundwater might contain pesticides, agricultural chemical, organic waste or other related residue. Proper investigation, and remedial actions, if necessary, should be conducted under the oversight of and approved by a government agency at the site prior to construction of the project.

- 8) If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials; handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA.

- 9) DTSC can provide cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies that are not responsible parties, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see [www.dtsc.ca.gov/SiteCleanup/Brownfields](http://www.dtsc.ca.gov/SiteCleanup/Brownfields), or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

## GS4 Continued

Ms. Smita Deshpande  
June 12, 2012  
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If you have any questions regarding this letter, please contact Rafiq Ahmed, Project Manager, at [rahmed@dtsc.ca.gov](mailto:rahmed@dtsc.ca.gov), or by phone at (714) 484-5491.

Sincerely,



Rafiq Ahmed  
Project Manager  
Brownfields and Environmental Restoration Program

cc: Governor's Office of Planning and Research  
State Clearinghouse  
P.O. Box 3044  
Sacramento, California 95812-3044  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

CEQA Tracking Center  
Department of Toxic Substances Control  
Office of Environmental Planning and Analysis  
P.O. Box 806  
Sacramento, California 95812  
Attn: Nancy Ritter  
[nritter@dtsc.ca.gov](mailto:nritter@dtsc.ca.gov)

CEQA # 3559

GS5

GS5 Continued

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 354  
SACRAMENTO, CA 95814  
(916) 653-6251  
Fax (916) 657-5390  
Web Site [www.nahc.ca.gov](http://www.nahc.ca.gov)  
ds\_nahc@pacbell.net



May 21, 2012

Ms. Smita Deshpande, Project Planner

**California Department of Transportation – District 12**

3347 Michelson Drive, Suite 380  
Irvine, CA 92612

Re: SCH#2009091001; Joint CEQA/NEPA Notice; draft Environmental Impact Report & draft Environmental Impact Statement (DEIR/DEIS) for the "San Diego Freeway (I-405) Improvement Project," located along the Interstate 405 between the Interstate 605 near Seal Beach and State Route 73 near Newport Beach, Orange County, California.

Dear Ms. Deshpande:

The Native American Heritage Commission (NAHC), the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3d 604).

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if so, to mitigate that effect. The NAHC did conduct a Sacred Lands File (SLF) search within the 'area of potential effect (APE)' and Native American cultural resources were not identified.

The NAHC 'Sacred Sites,' as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96, items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you

make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Pursuant to CA Public Resources Code § 5097.95, the NAHC requests cooperation from other public agencies in order that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources.

Furthermore, the NAHC if the proposed project is under the jurisdiction of the statutes and regulations of the National Environmental Policy Act (e.g. NEPA; 42 U.S.C. 4321-43351). Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq.*, 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CEQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254( r) and may also be protected under Section 304 of the NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for inadvertent discovery of human remains mandate the processes to be followed in the event of a discovery of human remains in a project location other than a 'dedicated cemetery'.

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

Finally, when Native American cultural sites and/or Native American burial sites are prevalent within the project site, the NAHC recommends 'avoidance' of the site as referenced by CEQA Guidelines Section 15370(a).

## GS5 Continued

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,

David Singleton  
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

## GS5 Continued

## Native American Contacts

Orange County  
May 21, 2012

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This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7060.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009091001; Joint CEQA/NEPA Document; draft Environmental Impact Report/draft Environmental Impact Statement (DEIR/DEIS) for the Interstate 405 Improvement Project from the intersection at I-405/605 to I-405 & SR 73; located in Orange County, California.



**GS5 Continued**

**Native American Contacts**

Orange County  
May 21, 2012

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This list is current only as of the date of this document.

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This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009991001; Joint CEQA/NEPA Document; draft Environmental Impact Report/draft Environmental Impact Statement (DEIR/DEIS) for the Interstate 405 Improvement Project from the Intersection at I-405/605 to I-405 & SR 73; located in Orange County, California.

## **RESPONSE TO GOVERNMENT (STATE) COMMENTS (GS)**

### **Response to Comment Letter GS1**

#### **Comment GS1-1**

Caltrans and OCTA thank the California Department of Fish and Wildlife (CDFW) for participating in the environmental process for the I-405 Improvement Project and acknowledge that CDFW has no comments on the Draft EIR/EIS. CDFW will be notified when the Final EIR/EIS is available for review.

### **Response to Comment Letter GS2**

#### **Comment GS2-1**

Caltrans and OCTA thank the Public Utilities Commission (PUC) for participating in the environmental process for the I-405 Improvement Project. Your comment was considered during identification of the Preferred Alternative as described in the Final EIR/EIS. PUC will be notified when the Final EIR/EIS is available for review.

A site diagnostics meeting will be arranged with the Commission's Rail Crossing Engineering Section, United States Navy, and Union Pacific Railroad (UPRR) during the design phase to discuss relevant safety issues and requirements for authorization to alter the existing grade-separated crossings.

### **Response to Comment Letter GS3**

#### **Comment GS3-1**

Caltrans and OCTA thank the California Transportation Commission (CTC) for participating in the environmental process for the I-405 Improvement Project. CTC's comments were considered during identification of the Preferred Alternative as described in the Final EIR/EIS. CTC will be notified when the Final EIR/EIS is available for review.

OCTA has already completed preliminary financial analysis for all of the build alternatives. Once the Preferred Alternative is identified, the formal process of securing the funding for construction and implementation has been advanced. It is common for transportation projects to have a funding shortfall in the planning phase. The project is considered a Major Project by FHWA, and a Draft Financial Plan (FP) must be submitted to FHWA prior to approval of the Final EIR/EIS. The Draft FP must identify full funding for the project.

**Comment GS3-2**

Caltrans and OCTA appreciate this comment and recognize that extensive coordination will be required with CTC for this project. OCTA intends to pursue design-build procurement regardless of which alternative is identified for implementation. Existing legislative authority would be used for Alternative 3 under Senate Bill 4; new legislation would be required for design-build procurement of Alternatives 1 and 2. OCTA expects legislative design-build authority for Alternatives 1 or 2 by January 1, 2014.

**Comment GS3-3**

In regards to Assembly member Lowenthal's concerns, please see Common Response – Coordination between Caltrans Districts 7 and 12, OCTA, Los Angeles Metro, COG, and the City of Long Beach.

In regards to Mr. Littig's concerns, please see Responses to Comments PC-L33-1 through PC-L33-7.

**Comment GS3-4**

The Commission shall receive a copy of the Final EIR/EIS and be notified as soon as the environmental process is complete so that it may consider the project for future consideration of funding.

**Comment GS3-5**

As described beginning on page 1-1 of the Final EIR/EIS, the RTP and FTIP will be modified to include the Preferred Alternative.

**Response to Comment Letter GS4**

**Comment GS4-1**

Caltrans and OCTA thank the Department of Toxic Substances Control (DTSC) for participating in the environmental process for the I-405 Improvement Project. DTSC's comments were considered during identification of the Preferred Alternative as described in the Final EIR/EIS. DTSC will be notified when the Final EIR/EIS is available for review.

Conditions in the project area that may pose a potential threat to human health and the environment are discussed in Section 3.2.5, Hazardous Waste/Materials, in the Draft EIR/EIS. Specifically, Section 3.2.5.2, Affected Environment, includes a summary of the database search findings, the search for which was conducted as part of the Initial Site Assessment (ISA) prepared for the project. As discussed in Section 3.2.5.2, the following database searches, research, and reconnaissance were conducted as part of the ISA:

- Search of regulatory records regarding possible hazardous material handling, spills, storage, or production at the project site or in its vicinity.
- Review of available information to describe the general geology and hydrogeology at the project site and adjacent areas.
- Review of historic aerial photographs and topographic maps.
- Reconnaissance of the project site and the immediate surrounding area.
- Development of conclusions and findings.
- Preparation of a report describing the assessment and presentation of the results and findings.
- A statement of interpretive limitations.

As discussed in Section 3.2.5.3, Environmental Consequences, in the Draft EIR/EIS, there are potential risks associated with many environmental conditions, including properties identified for acquisition; 19 leaking underground storage tank (LUST) sites, which have a potential to impact groundwater conditions; one Emergency Response Notification System (ERNS) site where soil contamination by gasoline was discovered in the soil around a fuel tank – 220 gallons of diesel fuel spilled during a traffic accident that occurred in 1987 at northbound I-405, south of I-605; bridges planned to be replaced and widened could contain asbestos-containing materials (ACMs) and/or lead-based paint (LBP); surface soils in the unpaved ROW could contain aerially deposited lead (ADL); freeway striping could contain LBP; approximately 10 cubic yards of unidentified soil that was observed on the southeast side of the Newland Street overcrossing; two 30-gallon open trash bins; and two 5-gallon paint buckets with lids that appeared to be dumped were observed on the I-405 northbound shoulder, just south of the I-605 interchange.

Measures HAZ-1 through HAZ-10, provided in Section 3.2.5.4, Avoidance, Minimization, and/or Mitigation Measures, address the potential impacts from these types of hazards that would potentially occur under the build alternatives. Most of these measures are standard procedures and/or regulations controlling these types of hazardous materials. All impacts related to hazardous materials would be substantially mitigated based on implementation of Measures HAZ-1 through HAZ-10.

#### **Comment GS4-2**

Mechanisms to initiate required investigation of, and/or remediation for, sites known to have contamination and that have had releases that may pose a potential concern during project construction are summarized in Measures HAZ-1 through HAZ-10 in Section 3.2.5.4, Avoidance, Minimization, and/or Mitigation Measures, in the Draft EIR/EIS. The measures include general citations to federal, State, and/or local regulatory agencies as appropriate for each measure. If unknown hazards are encountered during construction activities, Measure

HAZ-10 requires that construction cease and that Caltrans' Unknown Procedures for Construction be followed.

**Comment GS4-3**

As described in Section 3.2.5.3, Environmental Consequences, in the EIR/EIS, environmental investigations, sampling, and/or remediation for sites of potential concern that were recommended will be completed. With the implementation of Measures HAZ-1 through HAZ-10 in Section 3.2.5.4, Avoidance, Minimization, and/or Mitigation Measures, in the EIR/EIS, impacts related to hazardous waste/materials are considered not to be substantial. In addition, if work plans are required as part of the proposed project, such work will be overseen by the local regulatory agency responsible for oversight.

**Comment GS4-4**

Measures HAZ-3, HAZ-4, and HAZ-7 in Section 3.2.5.4, Avoidance, Minimization, and/or Mitigation Measures, in the EIR/EIS, require that investigations and/or testing be performed on all structures and paved surface areas as part of the project. The preconstruction surveys will include sampling and testing for hazardous chemicals, including ACM and LBP. In addition, Caltrans standard specifications require that all materials from these structures that exceed California Health and Safety Code criteria for hazardous waste must be properly disposed of at a State-certified landfill facility.

**Comment GS4-5**

Measures HAZ-1, HAZ-2, HAZ-5, HAZ-6, HAZ-7, HAZ-8, HAZ-9, and HAZ-10 in Section 3.2.5.4, Avoidance, Minimization, and/or Mitigation Measures, in the EIR/EIS, specifically address potential effects associated with potential onsite contaminated soil and/or groundwater. Any contaminated materials will be properly disposed of consistent with applicable federal, State, regional, and local laws and regulations. Caltrans standard specifications require that imported soil for onsite fill will require testing prior to use.

**Comment GS4-6**

As described in Section 3.2.5, an ISA was completed in accordance with (ASTM) E-1527-05 and Caltrans District 12 ISA guidelines. This document will be updated subsequent to identification of the Preferred Alternative, including recommended site assessment for the 12 potential ROW acquisition properties, as well as other recognized environmental conditions associated with the "non-acquisition properties" and "other concerns." The document requires proper testing, abatement, and disposal as described in Measures HAZ-1 through HAZ-10, in addition to Caltrans' Standard Specification related to identification, handling, and disposal of hazardous wastes and materials. All identification, handling, and disposal of hazardous wastes and

materials will be completed in accordance with applicable federal and State laws and regulations. At this time, preparation of a health risk assessment is not anticipated.

**Comment GS4-7**

As described in Section 3.1.2.3, agricultural lands along the I-405 corridor within the project limits are largely limited to two locations (see Figure 3.1.3-1): (1) NAVWPNSTA Seal Beach located in Seal Beach and (2) Segerstrom Ranch property located in Costa Mesa. Soil testing along NAVWPNSTA Seal Beach was completed as part of the SR-22 West Orange County Connection project. Some residual agricultural contaminants were found at concentrations below action levels. The proposed project would not encroach on the Segerstrom Ranch property. At this time, no additional testing for pesticides, herbicides, or other agricultural contaminants is anticipated. The need for any additional testing will be reconsidered during the next phase of the project based on the final design. Should any additional testing be required, all sampling and, if required, remedial action would be completed in accordance with Caltrans Policy and federal and State laws and regulations.

**Comment GS4-8**

As discussed in Section 3.2.5.3, Environmental Consequences, in the EIR/EIS, routine maintenance activities during operation of the proposed project would be required to follow applicable regulations with respect to the use, storage, handling, transport, and disposal of potentially hazardous materials; therefore, operation of the proposed project would not introduce new hazardous waste or materials.

**Comment GS4-9**

Thank you for your comment.

**Response to Comment Letter GS5****Comment GS5-1**

Caltrans and OCTA thank the Native American Heritage Commission (NAHC) for participating in the environmental process for the I-405 Improvement Project. NAHC's comments were considered during identification of the Preferred Alternative as described in the Final EIR/EIS. NAHC will be notified when the Final EIR/EIS is available for review.

Section 3.1.8.3, Environmental Consequences, and Section 5.2.4, Native American Coordination, of the Draft EIR/EIS provide a summary of the Native American consultation conducted to comply with all federal and State regulations (see pages 3.1.8-11 through 3.1.8-12 and 5-22 through 5-23). The project Historic Property Survey Report (HPSR) and Historic Resources

Evaluation Report (HRER) are available for review at <http://www.dot.ca.gov/dist12/405/index.htm#Technical>.

**Comment GS5-2**

Cultural resource documentation was completed in accordance with NEPA Section 106 of the National Historic Preservation Act and all other applicable federal laws/state laws and Executive Orders, including coordination with the NAHC. Please see Response to Comment GS5-1 above.

**Comment GS5-3**

Section 3.1.8.2, Affected Environment, of the Draft EIR/EIS states that no historic properties of religious and cultural significance were identified within the project Area of Potential Effects (APE); however, locations of potential resources were not disclosed (see pages 3.1.8-7 through 3.1.8-10).

**Comment GS5-4**

Section 3.1.8.3, Environmental Consequences, of the Draft EIR/EIS states that consultation with Native American tribal contacts is ongoing and would occur throughout the duration of the project, as requested (see page 3.1.8-12).

**Comment GS5-5**

Section 3.1.8.3, Environmental Consequences, of the Draft EIR/EIS states that cultural resources previously recorded in the APE were determined to have been destroyed or redeposited from another location. No existing Native American cultural resources were identified within the project APE; however, Measures CUL-1 and CUL-2 in Section 3.1.8.4, Avoidance, Minimization, and/or Mitigation Measures, in the EIR/EIS, specifically address protocol if previously unknown Native American cultural sites and/or Native American burial sites are discovered during construction (see page 3.1.8-13).

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